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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,690	08/16/2000	ANDREW K. BENSON	101997-5	3073
21125	7590	12/17/2003	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			LEFFERS JR, GERALD G	
		ART UNIT	PAPER NUMBER	
			1636	

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary	Application No.	Applicant(s)
	09/639,690	BENSON, ANDREW
	Examiner	Art Unit
	Gerald G Leffers Jr., PhD	1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6,8,9,14,17-21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6,8,9,14,17-21 and 23-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7/18/02. 6) Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/28/2003 has been entered.

The response filed 7/28/2003 amended several claims (claims 1, 14, 17, 25-26, 28-29 and 31). Claims 1-6, 8-9, 14, 17-21, 23-31 are pending in the instant application.

Any rejection of record in the previous office actions not addressed herein is withdrawn.

Information Disclosure Statement

Receipt is acknowledged of an information disclosure statement, filed 7/18/2003. The signed and initialed PTO Form 1449 has been mailed with this action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 8-9, 14, 17-21, 23-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite in that the metes and bounds of the phrase “a probe matrix having a plurality of target species of microorganisms” are unclear in the context of the claim. It appears from reading the specification the term is meant to specify that the genomic material obtained from the food product sample is hybridized to nucleic acids (e.g “probes”?) obtained from a plurality of target species of microorganisms.

Claim 1 is further vague and indefinite in that the metes and bounds of the phrase “storing information related to the at least one organoleptic property of the sample in the database” are unclear. The metes and bounds of the term “related to” are not defined in the context of the claim and do not appear to be explicitly defined in the specification in regard to the organoleptic property of the sample. It would be remedial to amend the claim language so that this “related” information is correlated to the organoleptic property of the food sample in such a way as to function in the claimed method.

Claim 1 is further vague and indefinite in that there is no clear and positive prior antecedent basis for the term “the food product” at the end of the claim. Does the term refer to the food product from which the test sample was taken at the beginning of the claim or to the food product for which organoleptic properties are to be predicted? Are the two food products intended to be the same (e.g. specific types of hot dogs, etc.), or can they be different (e.g. sushi vs. a hot dog)?

Claim 2 is vague and indefinite in that there no clear and positive prior antecedent basis for the phrase “the array of probes” in claim 1, upon which claim 2 is dependent. Similarly, there is no clear and positive prior antecedent basis for the term “the probe array” in claim 3, or the term “said array” in claim 5.

Claims 1, 9 and 14 each comprise the limitation “mining the database”, the metes and bounds of which are unclear. The term does not appear to be explicitly defined in the instant specification and is used in different context in the claims such that it is difficult to tell exactly what is intended by the phrase. For example, in claim 1 it is used prior to a recitation of an intended result, but does not provide any concrete connection to accomplishing the desired result of correlating an output distribution to at least one organoleptic property. In claim 9, the phrase “mining the database” is recited without any other qualification with regard to what is accomplished by the “mining”.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr., PhD whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Gerald G Leffers Jr., PhD
GERRY LEFFERS Primary Examiner
PRIMARY EXAMINER Art Unit 1636